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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942. No. 748

Estate of
GEORGE W. ZOELL,
Deceased.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

HELEN M. GITHENS,
Petitioner.

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INDEX.

	Page
I. Statement of matter involved	1
II. Basis of jurisdiction	2
III. Questions presented	3
IV. Specification of errors	4
V. Opinions below	4
VI. Reasons relied upon for allowance of the writ	4
The Constitution of the United States	4
Revised Statutes § 905	4
The Pennsylvania Intestate Act	5
General Principles	5
Decisions of the Pennsylvania Courts	6
Decisions of the Supreme Court of the United States	9
Conclusion	14

TABLE OF CASES CITED.

	Page
American Jurisprudence Volume 1, pp. 654, 656	5
Ashhurst's Estate, 32 District & County (Pa.) 547	13
Corr's Estate, 338 Pa. 337	13
Clarke v. Clarke, 178 U. S. 186, 190	11
Crossley's Estate, 135 Pa. Superior Ct. 524, 7A, 2d 539, 73 A. L. R. 974	7
Davis v. Davis, 305 U. S. 32, 40, 83 Law. Ed. 26, 29, 59 Supreme Court, 3	9
Fall v. Eastin, 215 U. S. 1, 54 Law. Ed. 65, 30 Supreme Court 3	11
Hall's Estate, 20 District & County (Pa.) 214	7
Hood v. McGehee, 237 U. S. 611, 59 Law. Ed. 1144	13
Milwaukee County v. M. E. White Co., 296 U. S. 276, 277, 80 Law. Ed. 227, 228, 56 Supreme Court 229	14
Olmsted v. Olmsted, 216 U. S. 386, 54 Law. Ed. 530, 30 Supreme Court 292	12
Slattery v. Hartford-Connecticut Trust Co., 115 Conn. 163, 161 Atl. 79	5
Williams v. North Carolina, 87 Supreme Ct. Law. Ed. 190	9-14

TABLE OF STATUTES CITED.

United States Constitution, Article IV, Section 1	2, 4
United States Revised Statutes § 905	3, 4
Pennsylvania Intestate Act 1917, § 16(b), P. L. 429	5

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Estate of

GEORGE W. ZOELL,

Deceased.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of Helen M. Githens respectfully represents:

I.

Statement of matter involved.

The petitioner, Helen M. Githens, is a niece of decedent, George W. Zoell, who died intestate on May 25, 1941, being a resident of and domiciled in Pittsburgh, Allegheny County, Pennsylvania.

Petitioner claims one-half of $38,711.60, being the residue of personalty in the estate.

The parties with adverse interest are Edgar L. Kress and F. A. Goedecke, Administrators of the Estate of the said decedent, and the said Edgar L. Kress, individually; the latter being sometimes herein referred to as the adverse claimant.

Petitioner is a niece of decedent. She is a daughter of Mary J. Campbell, a sister of decedent, who died in 1918; and she was known as Helen Campbell until August 8, 1919 when Caleb B. Githens and Gracie Githens, his wife, residing in Atco, New Jersey, adopted her by decree of the Orphans' Court in the County of Camden, State of New Jersey. In the adoption proceedings, Harry Reeves, Esq., as next friend of petitioner herein who was then a minor, 12 years of age, gave written consent to the adoption, after which petitioner resided and still resides in Atco, New Jersey. The decree of adoption recited "that the rights, duties, privileges and relations heretofore existing between the said Helen Campbell and her parents, lately deceased, shall be and are in all respects at an end, excepting the right of inheritance".

Decedent left him surviving four kin, namely: (1) Helen M. Githens, Petitioner; (2) Edgar L. Kress, a grand-nephew; (3) Martha M. Packer, a grand-niece, a sister of Kress; (4) Donald W. Biggs, a grand-nephew, brother of Kress. The last two conceded that they were barred from inheritance by adoption decrees duly entered in Pennsylvania Courts.

At the audit of the Administrators' Account in the Orphans' Court of Allegheny County, petitioner presented her claim to one-half of the residue; her claim was disallowed because of her adoption; the entire residue was awarded to Edgar L. Kress, the adverse claimant, and a decree of distribution was entered accordingly. Petitioner filed exceptions which were dismissed, then appealed to the Supreme Court of Pennsylvania, the highest Court of the Commonwealth in which a decision could be had, which, on November 23, 1942, affirmed the decree of distribution.

II.

Basis of jurisdiction.

The jurisdiction of this Court is invoked (1) under Article IV, Section 1 of the Constitution of the United

States, which directs that "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State"; and (2) under R. S. § 905, providing that authenticated records and judicial proceedings "shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken", (May 26, 1790 c. 11, 1 Stat. 122; Mar. 27, 1804, c. 56 (§ 2, 2 Stat. 299) and (3) under Section 237 of the Judicial Code as amended, (R. S. §§ 690, 709; Mar. 3, 1911, c. 231 §§ 236, 237, 36 Stat. 1156; Dec. 23, 1914, c. 2, 38 Stat. 790; Sept. 6, 1916, c. 448 § 2, 39 Stat. 726; Feb. 17, 1922, c. 54, 42 Stat. 366; Feb. 13, 1925, c. 229 § 1, 43 Stat. 937; Jan. 31, 1928, c. 14, § 1, 45 Stat. 54.)

The decree to be reviewed is the decree of the Supreme Court of Pennsylvania entered on November 23, 1942, affirming the decree of distribution of the Orphans' Court of Allegheny County entered on March 12, 1942.

III.

Questions presented.

1. Under the "full faith and credit" clause of the Constitution of the United States, does adoption of a child by decree entered in New Jersey bar inheritance of personal estate from a natural uncle who died intestate, domiciled in Pennsylvania, the decree having expressly reserved the right of inheritance?

2. Under the "full faith and credit" clause of the Constitution of the United States, does Section 16(b) of the Pennsylvania Intestate Act of 1917, P. L. 429, which bars inheritance by adopted persons from natural relatives apply to a decree of adoption entered in another state, if the decree expressly reserves the right of inheritance?

IV.

Specification of errors.

The Supreme Court of Pennsylvania, in affirming the decree of distribution entered by the Orphans' Court of Allegheny County, answered the questions presented (supra p. 3) in the affirmative; and petitioner intends to urge that said Court erred therein.

V.

Opinions below.

The opinion filed by the Orphans' Court of Allegheny County has not been officially reported, but a copy thereof will be found in the record (R. 8a).

The opinion filed by the Supreme Court of Pennsylvania has been officially reported in 345 Pa. 413; and a copy thereof will be found in the record (R. 6b).

VI.

Reasons relied upon for allowance of the writ.

It is submitted that the decision of the Supreme Court of Pennsylvania contravenes Article IV, Section 1 of the Constitution of the United States, in a matter of substance not heretofore determined by this Court, or probably not in accord with applicable decisions of this Court, and therefore a review on writ of certiorari should be granted.

The Constitution of the United States.

Article IV, Section 1, directs that "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State".

Revised Statutes § 905.

". . . And the said records and judicial proceedings . . . shall have such faith and credit given to them in

every court within the United States as they have by law or usage in the courts of the State from which they are taken."

The Pennsylvania Intestate Act.

Section 16(b) of the Act of June 7, 1917, P. L. 429; 20 P. S. Section 102, provides "Adopted persons shall not be entitled to inherit or take from or through their natural parents, grand parents or collateral relatives, but each adopted person shall have all his or her rights under this Act in the estates of his or her spouse, children and descendants."

General Principles.

In *American Jurisprudence,* Volume 1, p. 654, et seq., reference is made to the right of inheritance after adoption. In Section 55 p. 654, with regard to inheritance from or through the child, it is said that adoption statutes are not to be read as completely defining the incidents of the relationship between the adopted child and its kindred by adoption, but merely as establishing a status, the incidents of which are the same as those of a natural relationship; and in Section 57, page 656, with regard to inheritance from or through natural parents, it is said that consanguinity is so fundamental in statutes of descent and distribution that it may only be ignored by construction when Courts are forced so to do, either by the express terms of the statute or by inexorable implication; that an adopted child is, in a legal sense, the child both of its natural and its adopting parents, and is not, because of the adoption, deprived of its right of inheritance from its natural parents, unless the statute expressly so provides.

In *Slattery v. Hartford-Connecticut Trust Co.,* 115 Conn. 163, 161 Atl. 79, a child was adopted in Michigan, where an adopted child could inherit from his natural parents as well as from his adoptive parents. Although Connecticut refused such "double inheritance" to its own

adopted persons, the Connecticut court held, nevertheless, that a child adopted in Michigan could inherit from its natural parents residing in Connecticut. The court said, at page 166:

> "It has seemed wise to our Legislature to debar a child adopted under our statutes from the right of inheritance from his natural parents, and it has to this extent established our public policy. But it has not attempted to lay down any rule applicable in the case of children coming here from another state where they have been adopted under laws which do not take away that right."

Decisions of the Pennsylvania Courts.

The Orphans' Court of Allegheny County, in the Opinion (R. 8a) held that the Intestate Act of Pennsylvania deprives adopted persons of the right of inheritance from their natural relatives; and that the full faith and credit clause of the Constitution of the United States cannot be invoked in favor of inheritance rights reserved by a decree of Court in the State of adoption where such rights are denied by statute in the state of decedent's domicile.

The Supreme Court of Pennsylvania in the Opinion (R. 6b, reported at 345 Pa. 413) held that petitioner was not enabled by the reservation of her inheritance rights in the decree of adoption to claim a one-half share in the estate of her natural uncle; that the state would recognize her status as an adopted child of her foster parents, but under the Intestate Act she, like all other adopted children, cannot take anything from a natural collateral relative; that the New Jersey decree or the statute of that state to which the decree gives effect cannot alter the positive law of Pennsylvania; and that the full faith and credit clause of the Constitution of the United States requires only that her status as adopted be recognized. The highest court of Pennsylvania reasoned from principles announced in cases

in which adopted persons claimed the right to inherit, and it was held that the status of adoption should be recognized but the right of inheritance should be denied, because under the laws of the state where the property was found, adopted persons do not take; also from principles announced in cases in which the right of inheritance through natural relatives was preserved by statute and not by decree. In the case at bar, petitioner does not claim the right to inherit by virtue of adoption; to the contrary, the adverse claimant would disinherit petitioner, giving full faith and credit to that part of the decree in which the status of an adopted child is created, yet refusing full faith and credit to another part of the same decree in which the right of inheritance is reserved.

The Supreme Court of Pennsylvania cited *Crossley's Estate,* 135 Pa. Superior Court 524, 7 A, 2d 539, 73 A. L. R. 974, in which the status of adoption was recognized, but, there being *no reservation in the decree,* the Court held that the statute of Ohio did not preserve the right of inheritance. However, in Crossley's Estate, the Superior Court in its opinion, at page 526, distinguished *Hall's Estate,* 20 District and County Reports (Pa.) 214, saying that in the adoption proceeding then under consideration, "no right to inherit from or through the natural parents was reserved, as in Hall's Estate, 20 D. & C. 214."

In *Hall's Estate,* supra, the adjudication was written by Judge Gest, a learned jurist, who headed the commission appointed to codify the Pennsylvania law of decedents' estates including the Intestate Act from which Section 16(b) is quoted, supra p. 5. In that case a child was adopted in accordance with the same New Jersey Statute here involved, and the decree of adoption provided that the rights, duties, privileges and relations existing between the minor child and his parents shall be in all respects at an end, "excepting the right of inheritance", and the decedent died intestate, domiciled in Pennsylvania. The Court held that his personal estate should

be distributed between his natural children, including the son who had been adopted by others in New Jersey. Judge Gest reviewed the authorities, many of which were cited in the case at bar, and reached the following conclusions, viz:

(a) Under the Intestate Act of Pennsylvania the adopted child would be entitled to share in his natural father's estate unless it be clearly shown that his rights have been divested;

(b) The decree of adoption in New Jersey which is relied upon to show that his rights were so divested, reserved in clear terms his right to inherit from his natural father;

(c) The adoption proceedings in New Jersey were contractual in their nature and reserved in behalf of the infant child the latter's right to inherit from his natural father.

The opinion of the Supreme Court of Pennsylvania (R. 8b) points to the incongruity which would result if two sons of deceased parents were adopted, one in Pennsylvania, and the other in New Jersey; the child adopted in Pennsylvania could claim nothing from the estate of a natural collateral who died while domiciled in Pennsylvania, whereas the child adopted in New Jersey might claim and receive all. But, there is now a real incongruity in the case at bar, viz: that petitioner when a minor child, according to the record of the adoption proceedings, had an estate of her own and by her next friend consented to the adoption decree, contractual in its nature, thereby reserving the right of inheritance between her natural parents and herself; that she is deprived of her inheritance from her Pennsylvania relatives, whereas, in the event of her death intestate, the same relatives could claim her estate under the laws of New Jersey.

The effect of such reasoning is to permit the Courts of Pennsylvania not only to deny full faith and credit to the decree of a sister State, but also to impose upon New Jersey its laws and policies against next of kin who have been adopted in that State.

Decisions of the Supreme Court of the United States.

The most recent case in which this Court has considered the effect of Article IV, Section 1 of the Constitution, is *Williams v. North Carolina*, decided December 21, 1942, 87 Supreme Court Law. Ed. 190; and reference is made therein to the decision in *Davis v. Davis*, 305 U. S. 32, 40, 83 Law. Ed. 26, 29, 59 Supreme Court 3, where the Court held that the constitutional provision requires that "not some, but full" faith and credit be given judgments of a state court.

The decree involved in this case is a judgment of a Court of the State of New Jersey. Petitioner is the natural niece of the decedent and related to him in the same degree of consanguinity as the mother of the adverse claimant through whom the latter claims, so that were it not for the decree of adoption entered in Camden County on August 8, 1919, petitioner would share equally with the latter in the residue of the estate. The adverse claimant relies upon the adoption, an exemplified copy of the proceedings and decree therein having been offered in evidence. (Adoption decree, R. 4a.)

Did the Pennsylvania Courts give full faith and credit to the New Jersey decree? It was incumbent upon the Pennsylvania Courts to give "not some, but full" faith and credit to the decree, which it is urged, means full faith and credit *not to part, but to all,* of the decree. Petitioner does not rely upon the decree to support her right, nor does she seek by the decree to acquire any right of inheritance; but to the contrary, it is the adverse claimant who contends that she should be deprived of her inheritance by reason of the decree; wherefore it would seem that both

on reason and logic, the adverse claimant should not be permitted to strike out part of the decree and to obliterate therefrom the words "excepting the right of inheritance" by which the New Jersey Court limited its effect.

It is not infrequent in equity proceedings that the Courts enter decrees which are limited or restricted, or the effect of which is postponed. In divorce proceedings, in some states, it is customary to enter interlocutory decrees which do not become final for some time; or decrees which include property settlements and custody of children. If the parties seek to create or destroy property rights based upon such decrees, surely it would be incumbent upon the Courts to take cognizance of the decrees in full and not in part. In adoption proceedings, in some states, it is customary to enter decrees which, as in the case at bar, include a reservation of rights of inheritance; in other states (as in Pennsylvania), it is customary to enter decrees which create a right of inheritance through the adoptive parents and bar any future right of inheritance through the natural parents and collateral relatives. When an adopted person offers a decree *in support of a claim of inheritance,* there is authority for the rule that the Courts of one state must give effect to the status created by the decree but need not give effect to the inheritance claimed under it. However, when a decree of adoption is offered *to disinherit* the person affected thereby, there is no authority for the decision that the decree shall be effective but only insofar as it determines the status and destroys the inheritance, and that words and phrases in the decree which limit its effect to reserve the right of inheritance shall be ignored.

In the case at bar, this Court is not requested to consider the effect of the adoption *statute* of New Jersey and the full faith and credit to be accorded by the Courts of Pennsylvania; but rather is this Court requested to consider the *decree* of adoption entered by a Court of competent jurisdiction in New Jersey. There is a substantial

difference, because statutes can be altered, amended or repealed, but a judgment or decree unappealed from becomes final and is not subject to any change.

The decisions of this Court relating to the extra-territorial effect of a decree insofar as it affects property in another state have not determined the issue here involved.

In *Clarke v. Clarke*, 178 U. S. 186, 190, the error assigned was that the Courts of Connecticut refused full faith and credit to the decree of the Courts of South Carolina wherein the latter adjudged that the will of decedent had the effect of converting her real estate wherever situate into personalty; but it was held that though personal property might be controlled by the law of South Carolina, which was decedent's domicile, real estate within Connecticut was controlled by the law of Connecticut.

Petitioner concedes that the Pennsylvania law should determine which kin should take, and their shares in distribution; but urges that whether petitioner has been adopted and with what limitations should be determined by the law of the state in which the decree was entered, and the decree itself is entitled to full faith and credit.

In *Fall v. Eastin*, 215 U. S. 1; 54 Law. Ed. 65; 30 Supreme Court 3: a husband and wife, while living in Nebraska, acquired real estate jointly and by the same conveyance; they moved to Washington where a decree of divorce was entered in favor of the wife, setting apart to her the specific real estate acquired in Nebraska and directing the husband to convey all of his right, title and interest therein to her; the Nebraska Courts refused to set aside a subsequent conveyance which the husband made to defeat the decree, and in fraud of the rights of the wife. This Court held that the full faith and credit clause in the Constitution does not extend the jurisdiction of the Courts of one State to property situate in another, but only makes the judgment rendered conclusive on the merits of the claim or subject matter of the suit; that to give it the force of a judgment in another State, it must become a judgment

there; and furthermore that a decree of conveyance is not of itself legal title nor does it transfer the legal title. The effect of the decision is merely that judgments or decrees entered in one State do not of themselves create equities in or encumbrances against real estate located in another State, but if appropriate proceedings are taken based upon such judgments or decrees, they are entitled to full faith and credit. The Nebraska Courts were asked not to give full faith and credit to the Washington decree, but rather to declare that, because of notice or knowledge of the decree, the grantee took subject to equities in favor of the wife, and therefore the conveyance should be set aside; and the Nebraska Courts decided the equities were not such that the conveyance should be set aside. As Mr. Justice Holmes reasoned in his concurring opinion, the error of the Nebraska Courts lay not in their failure to recognize and give full credit to the decree, but in their interpretation and application of principles of equity with which this Court was not concerned. In the case at bar there is no specific property involved, there is no conveyance to set aside, petitioner and the adverse claimant are both volunteers; and petitioner seeks a distributive share in the estate of decedent according to the shares prescribed by the Intestate Laws of Pennsylvania.

In *Olmsted v. Olmsted*, 216 U. S. 386; 54 Law. Ed. 530; 30 Supreme Court 292, a decedent, who died in New York in 1874, by will devised a one-half interest in certain real estate in New York to his son, with the remainder over to the "lawful issue" of the latter; the son, who had married in 1870 and who had children by this marriage, entered into a meretricious relationship with another woman, and in February 1874, without procuring a divorce, went through a marriage ceremony with her in New Jersey; in 1880 the son and his paramour moved to Michigan with their two children, and in 1882 after the son procured a divorce in that State, they married there, which made their two children legitimate under the Michigan statute;

the contest was between the children by the first marriage, and the children of the second wife who also claimed that they were "lawful issue"; the New York Statute relating to illegitimate children who became legitimized by the subsequent marriage of their parents contained this limitation, viz: "such children shall enjoy all the rights and privileges of legitimate children, provided. however, that vested interests or estates shall not be divested or affected by this act." It is submitted that the New York Courts recognized the acts, records and judicial proceedings of Michigan, with full credit thereto, including the statute by which the children were legitimized but refused to disturb interests already vested when the acts were passed. In fact, it might well be argued that the decedent, when he gave the remainder over to "lawful issue" meant what the simple words implied, and that neither the Statute of New York nor the Statute of Michigan had anything to do with the case; that the Courts of New York only construed the will and decided that it would defeat testator's intention to include among "lawful issue" children who were legitimized subsequent to the date of his will. Similarly Pennsylvania Courts have held that a bequest or trust for the benefit of "children" of a son or daughter does not include a child adopted subsequent to the date of the will: *Ashhurst's Est.*, 32 District & County Reports (Pa.) 547; *Corr's Est.*, 338 Pa. 337. This Court, in line with *Clarke vs. Clarke*, supra, held that the decision of the New York Courts controlled and governed the descent, alienation and transfer of the land situate in that State.

In *Hood v. McGehee*, 237 U. S. 611; 59 Law. Ed. 1144; children adopted by decedent in Louisiana laid claim to land of decedent situate in Alabama. According to the laws of Louisiana, they were entitled to share; but the Alabama Statute of Descents, as construed by the Courts of that State, excluded children adopted by proceedings in other states. This Court held that Alabama is the sole

mistress of the devolution of land by descent, and that the Courts of Alabama gave full credit to the adoption in Louisiana, recognizing the status but denying the right of inheritance by reason thereof. In the case at bar, petitioner does not claim to inherit under the laws of New Jersey, nor does she claim to inherit by virtue of a decree entered there; to the contrary, petitioner claims that she is a natural heir of the decedent and that her status of adoption does not preclude her from sharing in the estate because the very decree which is invoked against her contains a limitation in plain terms reserving the right of inheritance.

Conclusion.

This Court, in *Williams v. North Carolina,* supra, said that judgments (and decrees) obtained in one State are entitled to full faith and credit in a sister State; that the exceptions to this rule are few and far between; and that this Court has been reluctant to admit exceptions since the very purpose of Article IV, Section 1 of the Constitution was "to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation", citing *Milwaukee County v. M. E. White Co.,* 296 U. S. 276, 277; 80 Law. Ed. 227, 228; 56 Supreme Court 229.

WHEREFORE your petitioner submits that, in this case there are special and important reasons which should move this Honorable Court in the exercise of sound judicial discretion to grant a review on writ of certiorari; and your petitioner prays that a writ of certiorari be issued out of and under the seal of this Court, directed to the Supreme Court of Pennsylvania, commanding that Court to certify and to send to this Court for review and determination, on a day certain to be therein named, a full and complete

transcript of the record and all proceedings therein; and that this Court reverse the judgment or decree of the Supreme Court of Pennsylvania and grant to petitioner such other and further relief in the premises as to this Court may seem meet and just.

Respectfully submitted,

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